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10 *Attorneys for Defendants, Caliber Home Loans, Inc. and U.S. Bank Trust, N.A., As Trustee for*
11 *LSF9 Master Participation Trust*

12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 In re VAN R. MCDOW and IRMA M.
15 MCDOW,

16 Debtors

17 VAN R. MCDOW and IRMA M. MCDOW,

18 Plaintiffs,

19 v.

20 CALIBER HOME LOANS, INC.; and U.S.
21 BANK TRUST, N.A., as Trustee for LSF9
22 Master Participation Trust,

23 Respondents

Case. No. 10-26388-LED

CHAPTER 13

Adv. Proc. No.: 16-01092-LED

**ANSWER OF DEFENDANTS CALIBER
HOME LOANS, INC AND U.S. BANK
TRUST, N.A. AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST**

24 COME NOW Defendants Caliber Home Loans, Inc ("Caliber") and U.S. Bank Trust,
25 N.A., as Trustee for LSF9 Master Participation Trust ("US Bank") (hereinafter Caliber and US
26 Bank will be referred to collectively as "Defendants") and answer the Complaint on file herein as
27 follows:

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JURISDICTION

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2 1. Answering paragraph 1 of the Complaint, Defendants deny jurisdiction as alleged,
3 or at all.

4 2. Answering paragraph 2 of the Complaint, Defendants object to the allegations as
5 legal opinions or conclusions; without waving the objections, and to the extent a response is
6 necessary, then Defendants deny the court has jurisdiction to address violations arising under
7 NRS 107.080.

8 3. Answering paragraph 3 of the Complaint, Defendants deny the allegations.

9 4. Answering paragraph 4 of the Complaint, Defendants deny the allegations.

10 5. Answering paragraph 5 of the Complaint, Defendants deny the allegations.

11 6. Answering paragraph 6 of the Complaint, Defendants deny the allegations.

12 7. Answering paragraph 7 of the Complaint, Defendants admit the allegations.

13 **PARTIES**

14 8. Answering paragraph 8 of the Complaint, Defendants lack information sufficient
15 to admit or deny, and thereon denies said allegations.

16 9. Answering paragraph 9 of the Complaint, Defendants admit the allegations
17 contained therein.

18 10. Answering paragraph 10 of the Complaint, Defendants admit the allegations
19 contained therein.

20 **ALLEGATIONS APPLICABLE TO ALL C OUNTS**

21 **Plaintiffs' Chapter 13 Bankruptcy**

22 11. Answering paragraph 11 of the Complaint, Defendants admit the allegations
23 contained therein.

24 12. Answering paragraph 12 of the Complaint, Defendants admit the allegations.

25 13. Answering paragraph 13 of the Complaint, Defendants admit the allegations
26 contained therein.

27 14. Answering paragraph 14 of the Complaint, Defendants object to the allegations on
28 the ground that the document speaks for itself.

1 15. Answering paragraph 15 of the Complaint, Defendants object to the allegations on
2 the ground that the document speaks for itself.

3 16. Answering paragraph 16 of the Complaint, Defendants object to the allegations on
4 the ground that the document speaks for itself.

5 17. Answering paragraph 17 of the Complaint, Defendants are informed and believe
6 the allegations were untrue; that at all material times, the Plaintiffs knew the identity of the note
7 holder and beneficiary, and the servicer for the loan, and based thereon, deny the allegations.

8 18. Answering paragraph 18 of the Complaint, Defendants lack information sufficient
9 to admit or deny, and thereon deny said allegations.

10 19. Answering paragraph 19 of the Complaint, Defendants lack information sufficient
11 to admit or deny, and thereon deny the allegations.

12 20. Answering paragraph 20 of the Complaint, Defendants lack information sufficient
13 to admit or deny, and thereon deny the allegations.

14 21. Answering paragraph 21 of the Complaint, Defendants object to the allegations on
15 the ground that the document speaks for itself.

16 22. Answering paragraph 22 of the Complaint, Defendants lack information sufficient
17 to admit or deny, and thereon deny the allegations.

18 23. Answering paragraph 23 of the Complaint, Defendants objects to the allegations
19 on the ground that the document speaks for itself.

20 24. Answering paragraph 24 of the Complaint, Defendants lack information sufficient
21 to admit or deny, and thereon deny the allegations.

22 **Post Chapter 13 Discharge**

23 25. Answering paragraph 25 of the Complaint, Defendants lack information sufficient
24 to admit or deny, and thereon deny the allegations.

25 26. Answering paragraph 26 of the Complaint, Defendants admit the allegation.

26 27. Answering paragraph 27 of the Complaint, Defendants object to the allegations on
27 the ground that the document speaks for itself.

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1 **28.** Answering paragraph 28 of the Complaint, Defendants object to the allegations on
2 the ground that the document speaks for itself.

3 **29.** Answering paragraph 29 of the Complaint, Defendants deny the allegations.

4 **30.** Answering paragraph 30 of the Complaint, Defendants deny the allegations.

5 **31.** Answering paragraph 31 of the Complaint, Defendants object to the allegations on
6 the ground that the document speaks for itself.

7 **32.** Answering paragraph 32 of the Complaint, Defendants object to the allegations on
8 the ground that the document speaks for itself.

9 **33.** Answering paragraph 33 of the Complaint, Defendants deny the allegations.

10 **34.** Answering paragraph 34 of the Complaint, Defendants lack information sufficient
11 to admit or deny, and thereon deny said allegations.

12 **35.** Answering paragraph 35 of the Complaint, Defendants lack information sufficient
13 to admit or deny, and thereon deny said allegations.

14 **36.** Answering paragraph 36 of the Complaint, Defendants lack information sufficient
15 to admit or deny, and thereon deny the allegations.

16 **37.** Answering paragraph 37 of the Complaint, Defendants lack information sufficient
17 to admit or deny, and thereon deny the allegations.

18 **COUNT I**

19 **(Violations of the Confirmed Chapter 13 Plan and Discharge Injunction)**

20 **38.** Answering paragraph 38 of the Complaint, Defendants repeat, re-allege, and
21 incorporate by this reference each of their denials, objections, and affirmative defenses to the
22 previous paragraphs as if fully set forth here.

23 **39.** Answering paragraph 39 of the Complaint, Defendants admit that the Plaintiffs
24 did allege above that the Defendants have violated the confirmed chapter 13 plan and the
25 discharge injunction. Except as expressly admitted, Defendants deny the allegations in this
26 paragraph, including the allegation that Defendants violated the confirmed chapter 13 plan
27 and/or the discharge injunction.

28 **40.** Answering paragraph 40 of the Complaint, Defendants deny the allegations.

1 41. Answering paragraph 41 of the Complaint, Defendants object because the
2 allegations state legal conclusions; provided however, that to the extent paragraph 41 does
3 require a response, Defendants deny said allegations.

4 42. Answering paragraph 42 of the Complaint, Defendants lack information sufficient
5 to admit or deny the allegations, and based thereon, deny them.

6 43. Answering paragraph 43 of Complaint, Defendants deny the allegations.

7 44. Answering paragraph 44 of Complaint, Defendants object because the allegations
8 state legal conclusions; provided however, that to the extent paragraph 44 does require a
9 response, Defendants deny the allegations.

10 45. Answering paragraph 45 of Complaint, Defendants deny the allegations.

11 46. Answering paragraph 46 of Complaint, Defendants object to the allegations as
12 vague; without waiving the objections, Defendants admit only that the Plaintiffs seek unspecified
13 damages, but deny the Plaintiffs are entitled to those damages, or any other relief, or at all.

14 47. Answering paragraph 47 of Complaint, the allegation is in the nature of a prayer
15 for relief, not an allegation of fact, so that no response to the prayer is necessary.

16 **COUNT II**

17 **(Violations of N.R.S. 107.080)**

18 48. Answering paragraph 48 of the Complaint, Defendants repeat, re-allege, and
19 incorporate by this reference each of their denials, objections, and affirmative defenses as if fully
20 set forth here.

21 49. Answering paragraph 49 of the Complaint, Defendants object because the statute
22 speaks for itself.

23 50. Answering paragraph 50 of the Complaint, Defendants object because the statute
24 speaks for itself.

25 51. Answering paragraph 51 of the Complaint, Defendants object because the statute
26 speaks for itself.

27 52. Answering paragraph 52 of the Complaint, Defendants object because the statute
28 speaks for itself.

1 **53.** Answering paragraph 53 of the Complaint, Defendants object because the statute
2 speaks for itself.

3 **54.** Answering paragraph 54 of the Complaint, Defendants deny the allegations

4 **55.** Answering paragraph 55 of Complaint, Defendants deny the allegations.

5 **56.** Answering paragraph 56 of Complaint, Defendants admit U.S. Bank Trust was
6 and is the beneficiary of the deed of trust. Except as expressly admitted, Defendants deny the
7 allegations, except to aver that the promissory note and its endorsements and allonges speaks for
8 itself.

9 **57.** Answering paragraph 57 of Complaint, Defendants deny the allegations.

10 **58.** Answering paragraph 58 of Complaint, Defendants are without information
11 sufficient to admit or deny and thereon deny the allegations.

12 **59.** Answering paragraph 59 of Complaint, Defendants deny the allegations therein.

13 **60.** Answering paragraph 60 of Complaint, Defendants are without information
14 sufficient to admit or deny and thereon deny the allegations.

15 **61.** Answering paragraph 61 of the Complaint, Defendants deny the allegations.

16 **62.** Answering paragraph 62 of the Complaint, Defendants deny the allegations.

17 **63.** Answering paragraph 63 of Complaint, Defendants object because the allegations
18 state legal conclusions; provided however, that to the extent paragraph 64 does require a
19 response, Defendants deny said allegations

20 **TRUST DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

21 **FIRST AFFIRMATIVE DEFENSE**

22 **(Failure to State a Claim)**

23 Plaintiffs' Complaint fails to state a claim against Defendants upon which relief maybe
24 granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 **(Estoppel)**

27 Plaintiffs acknowledged the deed of trust was in senior position in the chain of title and
28 that a debt in excess of \$360,000 was due, owing and unpaid, and are estopped to assert a

contrary position in this case.

THIRD AFFIRMATIVE DEFENSE

(Failure of Statutory Precedent)

Pursuant to 11 U.S.C. § 506(d) an adversary action is necessary to extinguish a first position deed of trust in bankruptcy and such a lien cannot be extinguished in an inconsistent and contradictory bankruptcy plan.

FOURTH AFFIRMATIVE DEFENSE

(Equitable Doctrines)

Defendants allege that the Plaintiffs' claims are barred by the equitable doctrines of laches, unclean hands, and failure to do equity.

FIFTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

Defendants allege that by reason of Plaintiffs' acts and omissions, Plaintiffs have waived its rights and is estopped from asserting the claims against Defendants.

SIXTH AFFIRMATIVE DEFENSE

(Void for Vagueness and Ambiguity)

To the extent that Plaintiffs' bankruptcy plan is vague and ambiguous the Plan lien stripping provisions should be void.

SEVENTH AFFIRMATIVE DEFENSE

(Due Process Violations)

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 5th and 14th Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

EIGHTH AFFIRMATIVE DEFENSE

(Violation of Procedural Due Process)

The Chapter 13 Plan is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clauses of the Nevada Constitution and United States

1 Constitution without reasonable notice being provided to the lender that a lien was being stripped
2 when the borrowers had confirmed the lien position in the same bankruptcy case.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Improper Cramdown)**

5 Plaintiffs' actions in seeking to cramdown the lien of their primary residence violates 11
6 U.S.C § 1322(b)(2).

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(Additional Affirmative Defenses)**

9 The Complaint and each of its purported claims does not describe the claims against
10 Defendants with sufficient particularity and certainty to enable Defendants to determine what
11 further defenses may exist. Defendants reserve the right to assert all defenses that may be
12 pertinent to or arise from Plaintiffs' claims against it when the precise nature of those claims has
13 been ascertained. Defendants also reserve the right to assert additional affirmative defenses in
14 the event discovery and/or investigation indicates that additional affirmative defenses are
15 applicable.

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PRAYER

WHEREFORE, Defendants pray for judgment as follows:

1. That the Court make a judicial determination that US Bank's Deed of Trust is a valid and enforceable lien that encumbers the Property.
2. That Plaintiffs recover nothing on account of the claims made in the Complaint and each of its purported claims;
3. For reasonable attorney's fees and costs; and
4. For any such other and further relief as the Court may deem just and proper in the case.

DATED this 26th day of September, 2016.

WRIGHT, FINLAY & ZAK, LLP

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*Attorneys for Defendants, Caliber Home Loans,
Inc. and U.S. Bank Trust, N.A., As Trustee for
LSF9 Master Participation Trust*

CERTIFICATE OF SERVICE

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2 1. On September 26, 2016, I served the following document(s):

3 **ANSWER OF DEFENDANTS CALIBER HOME LOANS, INC AND U.S.**
4 **BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION**
5 **TRUST**

6 2. I served the above-named document(s) by the following means to the persons as
7 listed below:

(Check all that apply)

- 8 ☒ a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons
9 and address and attach additional paper if necessary)

10 PETER M. ALDOUS, MICHAEL J. BROCK, GEORGE HAINES, AND DAVID
11 KRIEGER on behalf of Debtor VAN R. MCDOW AND IRMA M. MCDOW
paldous@hainesandkrieger.com, jpl.brock@gmail.com,
ghaines@hainesandkrieger.com,

12 KATHLEEN A. LEAVITT
13 courtsecf3@las13.com

- 14 ☒ b. United States mail, postage fully pre-paid (List persons and addresses. Attach
15 additional paper if necessary)

16 IRMA M MCDOW
17 VAN R MCDOW
18 8216 CHIMNEY BLUFFS ST.
NORTH LAS VEGAS, NV 89085

19 CALIBER HOME LOANS, INC.
20 PO BOX 24330
OKLAHOMA CITY, OK 73124

- 21 ☐ c. Personal Service (List persons and addresses. Attach additional paper if
22 necessary)

23 I personally delivered the document(s) to the persons at these addresses:

- 24 _____
25 ☐ For a party represented by an attorney, delivery was made by handing the
26 document(s) to the attorney or by leaving the document(s) at the attorney's office
with a clerk or other person in charge, or if no one is in charge by leaving the
document(s) in a conspicuous place in the office.

- 27 ☐ For a party, delivery was made by handing the document(s) to the party or by
28 leaving the document(s) at the person's dwelling house or usual place of abode
with someone of suitable age and discretion residing there.

- ☐ d. By direct email (as opposed to through the ECF System) (List persons and email addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- ☐ e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)

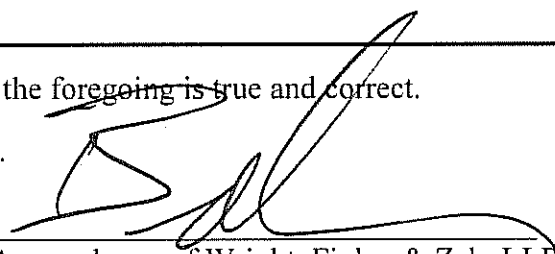
Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

- ☐ f. By messenger (List persons and addresses. Attached additional paper if necessary)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to the Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on this 26th day of September, 2016.


An employee of Wright, Finlay & Zak, LLP)